

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLANTIC CITY ELECTRIC CO.  
Employer

and

Case 04-RC-221319

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 210  
Petitioner

DECISION ON REVIEW

The issue presented in this case is whether the Acting Regional Director correctly found that the Employer's System Operators do not possess the authority to assign employees to places or responsibly direct employees using independent judgment within the meaning of Section 2(11) of the Act, and therefore do not constitute statutory supervisors.

On June 15, 2018, the Acting Regional Director issued a Decision and Direction of Election, in which he found that the System Operators do not constitute supervisors. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review. The Petitioner filed an opposition, and the Board granted the Employer's motion to file a reply brief.

On December 13, 2018, the Board granted the Employer's request for review with respect to whether the System Operators possess the authority to assign employees to places and responsibly direct employees using independent judgment, and denied review in all other respects.<sup>1</sup> Thereafter, the Employer and the Petitioner filed briefs on review. The Board also accepted an amicus brief from the International Brotherhood of Electrical Workers. The Employer filed a brief in response to the amicus brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup> Having carefully considered the entire record in this proceeding, including the briefs on review and the amicus brief, we affirm the Acting

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<sup>1</sup> Member McFerran would have granted review only with respect to assignment of employees to places using independent judgment and would have denied review in all other respects.

<sup>2</sup> Chairman Ring is recused and took no part in the consideration of this case.

Regional Director's Decision and Direction of Election. We find that this case differs from *Entergy Mississippi, Inc.*, 367 NLRB No. 109 (2019), because the Employer here failed to meet its burden of proving that the System Operators possess the authority to assign or responsibly direct employees within the meaning of Section 2(11).<sup>3</sup>

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<sup>3</sup> The Board has long recognized that the burden to establish supervisory status is not met where the record evidence "is in conflict or otherwise inconclusive." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989) ("[W]henver the evidence is inconclusive on particular indicia or supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia."). Here, the evidence presented regarding the use of independent authority to assign or responsibly direct employees was at best conflicting. While some Employer witnesses testified that System Operators have the authority to prioritize jobs, Senior System Operator Jim Luciani's testimony disputed the assertion that System Operators have the authority to command Dispatchers, Field Supervisors, and Work Coordinators to dispatch employees to a specific location or call them back, apart from providing input as to which locations may be of higher priority. Rather, it would appear from his testimony that the Dispatchers, Field Supervisors, and Work Coordinators are tasked with handling both the regular dispatch of crews and work assignments as well as dispatch in the event of regular or multiple outages. Nor is there clear evidence of a specific occasion when a System Operator held over crews, assigned them to a job, or made a recommendation to do so that was then followed. To the extent that System Operators may cancel work, it is unclear what role they have in assigning or reassigning that work. It is also unclear that writing switching instructions constitutes independent judgment because these instructions are guided by a manual and are ordered by safety concerns. Unlike our colleague, then, we find that the Employer did not meet its burden and, therefore, we affirm the Regional Director's Decision and Direction of Election.

Contrary to his colleagues, Member Emanuel finds that Senior System Operators and System Operators (collectively "SOs") are supervisors within the meaning of Sec. 2(11) of the Act because they assign or designate field supervisors – who are themselves statutory supervisors – and their crews to places, using independent judgment, and because they give significant overall duties to field personnel. SOs monitor the Employer's "transmission system" (the high voltage lines and large substations connected to power plants) and its "distribution system" (smaller substations and equipment that are responsible for the delivery of electric service to industrial, commercial, and residential customers). In the normal course of their work SOs receive scheduled outage jobs pertaining to the maintenance, repair, and replacement of voltage lines and substation equipment, and then coordinate with service district managers in the field and dispatchers in the control room regarding the assignment of that work to field crews. Using system monitors and manuals, the SOs write multi-step switching instructions which are then faxed to the field for crews to use in powering down and shutting off equipment so that maintenance can be undertaken safely. When crews begin work at a substation, they telephone the SOs to report, step by step, as they perform switching operations. When storms are forecast that threaten to interrupt the delivery of electricity to customers, SOs have canceled scheduled work, and when storms cause outages, particularly for hospitals or other priority customers, SOs help to

LAUREN McFERRAN, MEMBER

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., November 18, 2019.

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prioritize where to send field crews and “trouble men” to restore power, and they can override field supervisors in making these decisions.

Based on these facts, Member Emanuel finds that SOs, using independent judgment, assign work daily to field supervisors and crews and that they cancel those assignments as the need arises. See *Oakwood Healthcare*, 348 NLRB 686, 688-689 (2006). And when unplanned outages occur as a result of severe weather or otherwise, SOs have authority to override field supervisors and prioritize crew assignments crews from one outage to another because they have a greater understanding of the needs of the entire electrical grid. The existence of supervisory authority does not hinge on the frequency of its exercise – and here it is exercised daily and, perhaps most importantly, when it counts most in emergencies. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 818 (2003). Accordingly, Member Emanuel would reverse the Acting Regional Director’s Decision and Direction of Election.